APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1959

No. 15,963

District Court Civil Action 2477-60
LINUS PAULING, *Appellant*,

v.

JAMES O. EASTLAND, *et al.*; *Appellees*.

FILED—Sept. 6, 1960, Joseph W. Stewart, Clerk

Before: PRETTYMAN, Chief Judge, BAZELON and BASTIAN, Circuit Judges, in Chambers.

Order

This case came on for consideration on appellant's motion for a stay of the effect of or the return day of an order *duces tecum* made by appellee, Senator Thomas J. Dodd, for and in behalf of the United States Subcommittee on Internal Security, and on appellant's motion that the case be submitted on the merits, and counsel for appellees have agreed that the case should be submitted on the merits, and having heard argument on the motion for a stay and on the merits,

it is

ORDERED by the court that the motion for a stay is denied and that the judgment of the District Court on appeal is affirmed.

Per Curiam.

Dated September 6, 1960.

Each judge reserves the right to file a statement as to his views.

APPENDIX "B"

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15963

LINUS PAULING, *Appellant*,

v.

JAMES O. EASTLAND, *et al.*, *Appellees*.

Appeal from the United States District Court
for the District of Columbia

Statement of Chief Judge Prettyman on Appellant's Motion for Stay Pending Appeal and on the Merits

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Filed September 7, 1960

Mr. A. L. Wirin for appellant.

Mr. Carl W. Belcher, Assistant United States Attorney, with whom *Mr. Oliver Gasch*, United States Attorney, was on the pleadings, for appellees.

Before PRETTYMAN, Chief Judge, and BAZELON and BASTIAN, Circuit Judges.

PRETTYMAN, *Chief Judge:* In view of the limitations of time upon the appellant in this matter I am filing this somewhat sketchy memorandum of my views without attempting to formalize them into an opinion and without awaiting the statements of my brethren.

Appellant Pauling, a resident and citizen of California, participated in the preparation of a petition addressed to the United Nations, urging an international agreement for the cessation of the testing of nuclear weapons. More than eleven thousand signatures of persons from forty-nine countries appeared on the petition. The matter came to the attention of the Subcommittee on Internal Security of the United States Senate and was made a subject of inquiry by that Committee. At the conclusion of an extensive colloquy Pauling was directed clearly and succinctly by Senator Dodd, presiding at the meeting of the Subcommittee, to appear at a later date, now fixed as September 15, 1960, and to bring with him "all signatures or purported signatures to the petition presented by you to the Secretary General of the United Nations on January 15, 1958, together with all letters of transmittal by which, or in connection with which, such signatures were transmitted to you or received by you." Pauling agreed to comply with the first part of the directive, pertaining to the signatories, but declined to comply with the second part, pertaining to the letters of transmittal. Given a choice between complying with the entire directive or, by refusal, rendering himself liable to a recommendation to the Senate for citation for contempt, Pauling brought a civil action in the District Court in the District of Columbia for a declaratory judgment. His prayer was that the court declare the directive of the Subcommittee void and enjoin enforcement of the directive and possible prosecution for failure to comply. He also moved for an interlocutory stay *pendente lite*. The District Court dismissed the complaint. Pauling appealed and applied here for a stay.

We do not initially consider the validity of the order of the Senate Subcommittee. We must first consider a threshold question, which is the availability of judicial consideration at this point under the circumstances which have thus far transpired. Judicial authority arises upon the happening of an event or the existence of a fact, or sometimes

the threat of an event or a fact. It does not come into being *in vacuo*. In our jurisprudence courts do not have inherent power, absent specific Constitutional or legislative provision, to render advisory opinions. We have the declaratory judgment statute. But even to invoke that process the circumstances must bring the matter within the bounds of judicial power. There must be a justiciable controversy. The action calls for the exercise of a power to declare existing law upon existing facts.[1] The Supreme Court said, in *Federation of Labor* v. *McAdory*:[2]

> "The requirements for a justiciable case or controversy are no less strict in a declaratory judgment proceeding than in any other type of suit. * * * This Court is without power to give advisory opinions. * * * It has long been its considered practice not to decide abstract, hypothetical or contingent questions, * * * or to decide any constitutional question in advance of the necessity for its decision; * * * or to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied, * * * or to decide any constitutional question except with reference to the particular facts to which it is to be applied * * *."

For declaratory judgment there must not only be a controversy, but the controversy must be justiciable.

Our initial question is whether the events which have thus far occurred and the factual situation which presently exists are such that the authority of the judiciary can be invoked at this point. No detention has occurred. The date when Pauling must decide whether to comply or not to comply with the directive has not arrived. He has not been cited for contempt or reported to the Senate for citation.

It seems quite clear that as a matter of basic general principle a court cannot interfere with or impede the

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[1] 1 ANDERSON, DECLARATORY JUDGMENTS § 9, p. 46 (2d ed. 1951).

[2] 325 U. S. 450, 461 (1945).

processes of the Congress by proscribing anticipatorily its inquiries.[3] This is so not only from the viewpoint of the Constitutional separation of powers between two branches of the Government but also from the practical viewpoint of simple procedural efficiency.

It is of course true, as Pauling argues, that the courts may review a judgment of conviction in a criminal case for contempt of the Congress and in such a proceeding may hold the attempted action by the Congress, or its Committee, invalid. But such a judgment by the court is clearly the exercise of a judicial function, similar to the duty and function of the court to review the impact of an enactment by the Congress upon the property or business of a citizen. If a person under indictment or under judgment of conviction is before a court and challenges the indictment or conviction, the court must apply the law, paying heed and giving effect, first of all, to Constitutional provisions. The indictment or conviction gives incidence to judicial power. There are circumstances under which a court of equity will enjoin criminal prosecutions or consider their validity in an action for declaratory judgment.[4] These cases constitute an exception to the general rule that courts of equity will not interfere with criminal prosecutions. Exceptional circumstances of compelling force create the exception. In the case at bar the present situation of appellant Pauling is as we have described it, and on the other hand, contrawise, is the right of the Senate to pursue its legislative duties without judicial interference. The separation of powers principle is one of the basic concepts of the Consti-

[3] Mins v. McCarthy, 93 U. S. App. D. C. 220, 209 F. 2d 307 (D. C. Cir. 1953); Fischler v. McCarthy, 117 F. Supp. 643 (S. D. N. Y. 1954); *aff'd*, 218 F. 2d 164 (2d Cir. 1954).

[4] See, *e.g.*, Terrace v. Thompson, 263 U. S. 197 (1923); Packard v. Banton, 264 U. S. 140 (1924); Evers v. Dwyer, 358 U. S. 202 (1958); BORCHARD, DECLARATORY JUDGMENTS 1020 et seq. 2d ed. 1941); 2 ANDERSON, DECLARATORY JUDGMENTS 1471 et seq. (2d ed. 1951).

tution. The courts have no power of interference, unless and until some event, such as arrest, indictment or conviction, brings an actual controversy into the sphere of judicial authority. The courts cannot interfere merely upon the petition of a person potentially liable to some such event. It is clear to me that the doctrine of the separation of powers prevails here.

Basing his argument upon the opinions of the Supreme Court in the *Jurney*[5] and *McGrain*[6] cases, Pauling argues that if he were under detention he could test by an action for habeas corpus the power of the Senate to try him for contempt; and that the same rights available to him in a proceeding for habeas corpus are available to him in an action for declaratory judgment when he is not under detention. But the purpose of the Great Writ is to test the validity of a detention. When a person is under detention he has been and is being deprived of his liberty, and this fact is sufficient to invoke judicial power. The same basic doctrine, which we have mentioned as to judicial power to review convictions, would seem to apply, under the *Jurney* and *McGrain* opinions, to judicial power when a person is under detention but not under conviction. I think the incidence of judicial power invoked by petition for habeas corpus, an extraordinary remedy, available to test the legality of a detention, does not occur when no detention has occurred. The facts which would bring the dispute within the orbit of judicial power have not taken place. The rights available under the Writ do not arise when the basic justification for the Writ does not exist. A holding by a court that the judicial power available under the Writ to a person under detention is likewise available to any person under any circumstance, detained or not, would be flatly contrary to the history, intent, purpose, and undeviating interpretation of the Writ.

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[5] Jurney v. MacCracken, 294 U. S. 125 (1935).

[6] McGrain v. Daugherty, 273 U. S. 135 (1927).

Although on argument here Pauling concedes that he could not obtain from a court an injunction against the contemplated action of the Senate Subcommittee, or of the Senate, he contends that a declaratory judgment in respect to his rights and in respect to the validity of the contemplated action would not really interfere with the Senate. But such a differentiation seems to me to be without substance. It is unthinkable to me that, if the Courts should hold a specific directive of a Committee of the Congress unconstitutional and void, the Committee would nevertheless attempt to enforce that directive. So, as I view it, a declaratory judgment would be as effective an impingement upon and interference with legislative proceedings as a flat injunction would be. Thus I think that a declaratory judgment respecting the validity of contemplated Congressional action would violate the doctrine of the separation of powers and would be an illegal impingement by the judicial branch upon the duties of the legislative branch.

The material which appellant Pauling refuses to produce consists of the letters by which various persons transmitted to him signatures for the petition. He says that production of these letters would disclose to the Congress names of the people who secured the signatures. He says he will not reveal their names because of his fear of "reprisals" against them. By reprisals he says he means possible loss of employment, black-listing, ostracism, etc. He argues that the directive of the Subcommittee is therefore violative of his First Amendment rights. But, as I have already indicated, I do not reach that question, *i.e.*, the validity of the directive, because I do not find judicial power to consider it in the present posture of the case.

In summation, it is perfectly clear in my view that, if Pauling should be cited for contempt and thereafter convicted, either by the Senate or by a court, of contempt, the courts will review that judgment and may in that proceeding pass upon the validity of the order of the Subcommittee.

It is equally clear to me that the courts have no power in the proceeding presently before us to pass upon, either by injunction or by declaratory judgment, the validity of the Subcommittee order. I have therefore voted to affirm.

APPENDIX "C"

Amendment I to the United States Constitution

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV to the United States Constitution

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Federal Declaratory Judgment Act 28 U. S. Code. Section 2201

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. [illegible]

[illegible]

[illegible]

and [illegible]

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE, IN SUPPORT OF PETITION FOR CERTIORARI

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INDEX

Page

Statement 1

Interest of the Amicus 2

Questions Presented 4

Statement of the Case 5

Reasons for Granting the Writ 6

Conclusion 10

CITATIONS

Cases:

Aetna Life Insurance Co. v. *Haworth*, 300 U.S. 227 (1937) 7

Barenblatt v. *United States*, 360 U.S. 109 (1959) 3, 8, 9

Bates v. *Little Rock*, 361 U.S. 516 (1960) 9

Braden v. *United States*, No. 54, this Term, certiorari granted, 362 U.S. 926 3

Brownell v. *Tom We Shung*, 352 U.S. 180 (1956) 8

Deutch v. *United States*, No. 233, this Term 3

Eccles v. *Peoples Bank*, 333 U.S. 426 (1948) 7

Fisher v. *McCarthy* (D.C., S.D.N.Y.), 117 F. Supp. 643, aff'd 218 F. 2d 164 (Pet. App. 24) 6

Gojack v. *United States*, Misc. No. 313, this Term 3

Hearst v. *Black* (C.A.D.C.), 87 F. 2d 68 7

Hines v. *Grimes Packing Co.*, 337 U.S. 86 (1949) 7

Joint Anti-Fascist Refugee Comm. v. *McGrath*, 341 U.S. 123 (1951) 7

Jones v. *S.E.C.*, 298 U.S. 1 (1936) 7

Lovinger v. *United States*, No. 328, this Term 3

McPhaul v. *United States*, No. 33, certiorari granted, 362 U.S. 917 3

Muse v. *McCarthy* (C.A.D.C.), 209 F. 2d 307 6

N.A.A.C.P. v. *Alabama*, 357 U.S. 449 (1958) 9

Pfeiffer v. *McElroy* (C.A.D.C.), 278 F. 2d 252 10

Price v. *United States*, No. 231, this Term 3

Russell v. *United States*, No. 239, this Term 3

Shelton v. *United States*, No. 246, this Term 3

Shields v. *Utah, Idaho Central R.R. Co.*, 305 U.S. 177 (1938) .....
Sinclair v. *United States*, 279 U.S. 263 (1929) .....
Sweezy v. *New Hampshire*, 354 U.S. 234 (1957) .....
Talley v. *California*, 362 U.S. 60 (1960) .....
Watkins v. *United States*, 354 U.S. 178 (1957) .....
Whitman v. *United States*, No. 300, this Term .....
Wilkinson v. *United States*, No. 37, certiorari granted, 362 U.S. 926 .....

STATUTES AND RULES:

2 U.S.C. §192 .....
Declaratory Judgment Act of 1934 .....
Rule 42, U.S. Supreme Court .....
Rule 44(7), U.S. Supreme Court .....

OTHER AUTHORITIES:

Sen. Rep. No. 1005, 73rd Cong., 2d Sess. 2 (1934) ...
United Nations Review, Volume 6, Number 11, May 1960, p. 43 .....

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 419

LINUS PAULING, *Petitioner*,

v.

JAMES O. EASTLAND, THOMAS J. DODD, OLIVER GASCH, and JOSEPH C. DUKE

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AMICUS CURIAE, IN SUPPORT OF PETITION FOR CERTIORARI

STATEMENT

This brief is submitted by the American Civil Liberties Union, *amicus curiae*, with the written consent of both parties filed with the Clerk of this Court. In this brief, the *amicus* will support petitioner's petition for a writ of certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit, which, on September 6, 1960, affirmed an order of the United States District Court dismissing petitioner's complaint.

While the American Civil Liberties Union is aware that this Court does not favor *amicus curiae* briefs in support

of certiorari petitions, it is, nevertheless, filing the instant brief because of the importance of this case and because of its concern that if certiorari is denied it will be deprived of an opportunity to submit *on the merits*[1] its views with respect to what is, perhaps, the major issue involved, *viz.*: whether and under what circumstances a witness before a congressional committee can invoke the equity jurisdiction of the district court to adjudicate the validity of an order *duces tecum* prior to the institution of contempt proceedings against him. Unless certiorari is granted, this major and novel issue will, after October 11, 1960, have been mooted.[2]

INTEREST OF THE AMICUS

The American Civil Liberties Union is a national, non-partisan organization devoted solely to the protection and advancement of constitutional rights. Civil liberties, born of centuries of the people's struggle for dignity and freedom, are a basic part of man's heritage. Freedom of religion, thought, communication, assembly, dissent, freedom from discrimination, and the right to due process, are highly prized parts of this heritage. We are interested in this case because of our conviction that congressional

[1] Apart from the submission of a brief *amicus* on the merits in accordance with Rule 42, we are informed by petitioner's counsel that if certiorari is granted petitioner will permit the *amicus* to have a portion of petitioner's time for oral argument as provided by Rule 44(7).

[2] On September 9, 1960, the Solicitor General advised this Court that petitioner's reappearance before the Senate Subcommittee on Internal Security, originally scheduled for September 15, 1960, had been postponed to October 11, 1960. The Solicitor General further advised of the accelerated filing of the petition and brief in opposition in order to "afford this Court an opportunity to consider the petition and, if the Court is so disposed, to determine before October 11th whether to grant or to deny the writ of certiorari."

investigations involving broad-scale intrusions into the lives and affairs of private citizens have transformed the valid congressional power to investigate into exposure for exposure's sake. The docket of this Court bears witness to the insistent claim that since *Barenblatt* v. *United States*, 360 U.S. 109 (1959), the lower courts have been permitting congressional committees to ride roughshod over individuals' First, Fourth and Fifth Amendment rights.[3]

We are especially concerned with this problem in the instant case because petitioner is being compelled to disclose the names of persons who circulated and solicited signatures for a petition of some 11,000 scientists from some 49 nations as part of a world movement to secure action within the United Nations to arrest and prevent further contamination of the world's atmosphere caused by nuclear explosions. These are persons, who without reference to particular national interest, contributed their services in order to enable Linus Pauling (petitioner herein) to place before the United Nations an expression of a representative and impressive group of scientists from all over the world concerning nuclear contamination—a subject that affects all nations and peoples. Since the "Pauling petition" may not coincide with the nuclear or nationalistic policy of countries where some of these persons reside, they may become subject to persecution. Indeed, the Committee's insistence that petitioner disclose their names can only interfere with and restrain like

[3] *Braden* v. *United States*, No. 54, this Term, certiorari granted, 362 U.S. 926; *Wilkinson* v. *United States*, No. 31, certiorari granted, 362 U.S. 926; *McPhaul* v. *United States*, No. 33, certiorari granted, 362 U.S. 917; see also, this Term, *Deutch* v. *United States*, No. 233; *Shelton* v. *United States*, No. 246; *Russell* v. *United States*, No. 239; *Whitman* v. *United States*, No. 302; *Lovercight* v. *United States*, No. 328; *Price* v. *United States*, No. 331; *Gojack* v. *United States*, Misc. No. 313.

contributions of essential information to the United Nations by the world body of scientists.[4]

QUESTIONS PRESENTED

Embraced within petitioner's Statement of Questions presented (Pet. 2), are the following issues:

> (1) Whether and under what circumstances a witness before a congressional committee can invoke the equity jurisdiction of the district court to adjudicate the validity of an order *duces tecum* prior to the institution of contempt proceedings against him?
>
> (2) Does a dragnet order by a congressional committee requiring production of letters of transmittal through which signatures of more than 11,000 scientists were submitted to the United Nations in support of a petition condemning contamination of the world's atmosphere by nuclear explosions, where the result of such order would compel disclosure of the identities of, and retaliation against, those persons who circulated and transmitted said petition, relate to any valid legislative purpose?

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[4] At the twenty-ninth session of the Economic and Social Council of the United Nations a Draft Declaration on Freedom of Information was sponsored by the United States and approved by a vote of 15 to 0, with 3 abstentions (Bulgaria, Poland and the USSR) for transmittal to the General Assembly. The Declaration proclaims that "our peoples should freely enjoy free interchange of information and access to all media of expression," that "all governments should pursue policies under which the free flow of information, within countries and across frontiers, will be protected," and that "no government or public or private body or interests should exercise such control over media for disseminating information as to prevent the diversity of sources of information or deprive the individual of free access to such sources." *United Nations Review*, Volume 6, Number 11, May 1960, p. 43.

STATEMENT OF THE CASE

Petitioner, Linus Pauling, is the holder of the 1954 Nobel prize for chemistry. He participated in the preparation of a petition filed with the Secretary General of the United Nations urging an international agreement for the immediate cessation of nuclear testing in order to prevent further radiation pollution of the world's atmosphere and damage to the pool of human germ plasm resulting in an increase of the number of defective children born in future generations.

The petition contained signatures of over 11,000 scientists, (including thirty-six Nobel laureates, among them Albert Schweitzer and Bertrand Russell,) from forty-nine countries. This movement of world scientists came to the attention of the Subcommittee on Internal Security of the United States Senate and, at the hearing before the Committee on June 21, 1960, petitioner was directed to appear at a later date, now fixed as October 11, 1960, and bring with him "all signatures or purported signatures to the petition presented by you to the Secretary General of the United Nations on January 15, 1958, together with all letters of transmittal by which, or in connection with which, such signatures were transmitted to you or received by you."

Petitioner answered all questions fully and responsively put to him by members of the Subcommittee and its Counsel. In addition, petitioner agreed to comply with the first part of the directive, pertaining to the signatories. However, petitioner declined to comply with the second part, pertaining to the letters of transmittal. Given a choice between complying with the entire directive or, by refusal, rendering himself liable to citation for contempt, petitioner brought a civil action in the District Court in the District of Columbia for a declaratory judgment on August 5, 1960. The complaint alleged that "reprisals, in the form of harassment, and in some instances loss of employment, will be experienced by those who have dis-

tributed or circulated said petitions * * *" (Pet. 5). His prayer was that the court declare the directive of the Subcommittee void and enjoin enforcement of the directive and possible prosecution for failure to comply. He also moved for an interlocutory stay *pendente lite*. On August 23, 1960, the District Court dismissed the complaint. Petitioner thereupon appealed to the Court of Appeals for the District of Columbia Circuit and applied for a stay. On September 6, 1960, the Court of Appeals affirmed, and on the same date, denied petitioner's motion to stay the outstanding and pending Subcommittee's order, now returnable October 11, 1960.

REASONS FOR GRANTING THE WRIT

I

Unless certiorari is granted on the issue of "justiciability," the question whether, and under what circumstances, a witness before a congressional committee can invoke the equity jurisdiction of the district court to adjudicate the validity of an order *duces tecum* prior to the institution of contempt proceedings against him will, after October 11, 1960, have been mooted. After that date, petitioner either will have violated the Subcommittee's clear demand that he turn over the letters of transmittal thereby rendering himself liable to citation for contempt, or have complied with the Subcommittee's entire directive thereby relinquishing his claimed constitutional rights. In either event, the novel question of the justiciability of such an "order" prior to his becoming liable to citation for contempt will be out of the case.

Judge Prettyman, in a separate statement below, held this question non-justiciable, relying on *Mins* v. *McCarthy* (C.A.D.C.), 209 F. 2d 307.[3] While we might agree that

[3] The court below entered a *per curiam* order. In a separate statement of views, Judge Prettyman cited, in addition to the *Mins* case, *Fishler* v. *McCarthy* (D.C. SDNY), 117 F. Supp. 643, aff'd 218 F. 2d 164 (Pet. App. 24).

where "a committee of the Congress has issued a subpoena *ad testificandum* to a witness, to appear at a hearing, without defining the questions to be asked, the judicial branch of the Government should not enjoin in advance the holding of the hearing or suspend the subpoena" (*ibid*), that is not this case.[6] Here, petitioner has appeared; he has answered all questions; he is challenging a specific order made by respondent Dodd on behalf of the Subcommittee, expressly stated and clearly defined. In this case, the order is "definite and concrete." *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240 (1937). In our view, the validity of such an *order* can be determined now, and in this proceeding. Cf. *Eccrs v. Dwyer*, 358 U.S. 202 (1958); *Shields v. Utah, Idaho Central RR Co.*, 305 U.S. 177, 183 (1938); *Hines v. Grimes Packing Co.*, 337 U.S. 86, 98-99 (1949); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 154-156 (1951).

This Court has held that the "good faith" of the witness does not constitute a defense to a prosecution for contempt of Congress. *Sinclair v. United States*, 279 U.S. 263, 299 (1929); *Watkins v. United States*, 354 U.S. 178, 208 (1957). Yet, to our knowledge, it has never had occasion before now to decide whether and under what circumstances a witness can challenge in the district court the validity of an order *duces tecum* of a congressional committee *prior* to being cited for contempt.[7] The cases presently on this Court's docket involving claimed invasions by congressional committees of witnesses' First, Fourth and Fifth Amendment rights all arise from convictions for contempt of Congress under 2 U.S.C. § 192.[8] Unless

[6] In *Hearst v. Black* (C.A.D.C.), 87 F. 2d 68, the court below indicated that the equity jurisdiction of the district court could be invoked to restrain action by a congressional committee in excess of its authority in a proper case. *Id.*, at p. 71.

[7] Cf. *Jones v. SEC*, 298 U.S. 1, 26-28 (1936).

certiorari is granted, this Court, by allowing the procedural issue here involved to become moot, will have made the price of a witness' assertion of his constitutional rights before congressional committees the gauntlet of indictment, trial, conviction and appeal. In our view, this is too high a cost for the exercise today of rights *guaranteed* as long ago as December 15, 1791. Cf. *Brownell* v. *Tom We Shung*, 352 U.S. 180, 183 (1956).[8]

II

Petitioner objected to the Committee's order requiring him to disclose the identities of the circulators of his petition to the United Nations since it would expose these persons to reprisal and inhibit the circulation of his and like petitions seeking action within the United Nations on the problem of survival in a nuclear age. Presumably, the Committee was looking for Communists. But there was no showing or even a claim by the Committee that a single circulator of Dr. Pauling's petition was a Communist or was associated with Communism. Was the Committee's order *duces tecum* an "indiscriminate dragnet procedure lacking in probable cause" (*Barenblatt* v. *United States*, 360 U.S. 109, 134 (1959)) in violation of the First and Fourth Amendments? Was it related to any valid legislative purpose?[9]

The importance of granting certiorari to decide these questions *now*, rather than *later*—after petitioner has been

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[8] In its report on the Declaratory Judgment Act of 1934, the Senate Judiciary Committee pointed out that the declaratory judgment "has been especially useful [in situations], now so often present, of having to act at one's peril or to act on one's interpretation of his rights, or abandoning one's rights because of a fear of incurring damage." *Sen. Rep. No. 1005*, 73d Cong., 2d Sess. 2 (1934).

[9] We think not. *See Sweezy* v. *New Hampshire*, 354 U.S. 234, 248, 250-251, 254, 265-267 (1957).

cited, indicted, tried and convicted—is inherent in the inhibitory effects flowing from the Committee's order. In *Talley* v. *California*, 362 U.S. 60 (1960), this Court said that the anonymous distribution of handbills "played an important role in the progress of mankind." *Id.*, at p. 64. In that case a California ordinance prohibiting the distribution of handbills if the identity of the distributor was not disclosed was held invalid *on its face*. In this case the anonymous distribution of Dr. Pauling's petition (and like communications) may play an "important role in the [survival] of mankind."

The Committee's order is not merely invalid because if petitioner complied with it "identification and fear of reprisal might deter perfectly peaceful discussion of public matters of importance" (*Talley* v. *California*, 362 U.S. 60, 65);[10] the Committee's order is invalid because it serves to put other scientists on notice that should they believe it important enough to initiate petitions to the United Nations expressing concern on the most important question of our time, they too will become subject to interrogation by the Senate Subcommittee on Internal Security. In *Watkins* v. *United States*, 354 U.S. 178 (1957), this Court recognized that the prospect of being subpoenaed before a congressional committee and subjected to interrogation, in view of the resulting publicity attending the witness' appearance, might be enough to inhibit full and free discussion of controversial issues. *Id.*, at pp. 197-198.

Whether or not there should be a resumption of nuclear weapons testing; or whether there should be an international agreement prohibiting further nuclear contamina-

[10] On a "balancing theory" (*Barenblatt* v. *United States*, 360 U.S. 109, 126) and in view of the allegations of reprisal and harassment, which are conceded inasmuch as the complaint was dismissed, the Committee's action cannot be justified. *N.A.A.C.P.* v. *Alabama*, 357 U.S. 449, 462 (1958); *Bates* v. *Little Rock*, 361 U.S. 516 (1960).

tion are issues which currently demand more discussion, not less. Cf. *Pauling* v. *McElroy* (C.A.D.C.), 278 F. 2d 252, 255. If, because of judicial abstention *now*, a world-wide scientists' protest should be inhibited, and nuclear testing should be resumed, the effects of radiation pollution on the world's atmosphere might prove disastrous. As a result of the Committee's order, public discussion by scientists on matters as important as nuclear contamination and disarmament may be frustrated. For this reason, we say that judicial review *later* of the questions raised by petitioner *now* may be judicial review too late.

CONCLUSION.

By reason of the foregoing, the petition for a writ of certiorari should be granted.

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